

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of OHV
Registration, Operation, and Trespass
Civil Citation No. 73207 Issued to
Kevin Charles Pullis

**NOTICE OF PREHEARING
CONFERENCE AND NOTICE OF
HEARING**

PLEASE BE ADVISED that a prehearing conference will be held by telephone conference call on Monday, November 7, 2005, beginning at 3:00 p.m. If the scheduled date or time is inconvenient, please contact the Administrative Law Judge as soon as possible at 612-349-2544 to request rescheduling.

The parties in this matter are Conservation Officer Bob Mlynar and Appellant Kevin Pullis. **Both of you must call into the conference at 651-284-3547 at the scheduled time.** Follow the directions given by the "Meeting Place" system. When it asks for the meeting number, enter "1212," followed by the "#" sign.

The purpose of the prehearing conference is to determine the general nature of the dispute that caused the appeal and to determine the best way to resolve it. The telephone call should last about 15 minutes. If the appeal cannot be resolved during the prehearing conference, the Judge will set a date for a hearing. The Judge will also decide whether the hearing shall be held by telephone or in person.

The citation appears to have been issued under to Minnesota Statutes, Section 84.773, subd. 1(2). That statute prohibits the operation of an off-highway vehicle on restricted areas within public lands that are posted or where gates or other clearly visible structures are placed to prevent unauthorized motorized vehicle access. In his appeal letter, Mr. Pullis denies that he did so.

Minnesota Statutes, Section 84.775, allows civil citations and penalties to be issued. Subdivision 2 of that statute provides that if a person appeals a citation, the hearing shall be held pursuant to procedures set forth in Section 116.072, subd. 6. That statute provides an expedited administrative hearing process, and refers to Minnesota Rules, parts 1400.8510 to 1400.8612. Those rules will govern the conduct of this appeal. Copies of the statutes and rules may be obtained from Minnesota's Bookstore, 660 Olive Street, St. Paul, Minnesota 55155, telephone: 651-297-3000. Statutes and rules may also be found at county law libraries and many other public libraries. The statutes may also be found at www.revisor.leg.state.mn.us/stats/. The rules may be found at www.revisor.leg.state.mn.us/arule/.

It is not necessary to have an attorney in order to participate in this case. Parties may, however, choose to be represented by legal counsel or any other representative of their choice.

After the hearing, the Administrative Law Judge will issue a recommended decision to the Commissioner of Natural Resources. After allowing at least five days to pass, the Commissioner will issue the final order. During the five-day period, the parties may file comments with the Commissioner regarding the recommended decision.

The Administrative Law Judge and the Commissioner must base their decisions only on factual information that is part of the hearing record. During the hearing, the parties must have available all documents, witnesses, and any other evidence they need to present their position. Subpoenas may be available to compel the attendance of witnesses or production of documents. See Minn. Rules pt. 1400.8601 for the procedures regarding subpoenas.

If Appellant fails to call in to the prehearing conference telephone call or fails to appear at the hearing, the citation will be upheld and the fine will have to be paid within 30 days of the issuance of the Commissioner's final decision, with no further opportunities for administrative appeal.

Appeal hearings should be limited to cases where there is a legitimate, good faith disagreement about the facts or the law. Minnesota Statutes, Section 116.072, subd. 6(d), provides that if the Administrative Law Judge finds that a hearing was requested solely for purposes of delay or that the hearing request was frivolous, the costs of holding the hearing may be added to the amount of the fine.

Questions concerning settlement of this matter may be directed to the Administrative Law Judge at 612-349-2544 or Patty Holt, Policy/Legal Analyst, Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota 55155-4047, telephone 651-296-0657.

Dated October 25, 2005

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge